

Jim Odiorne

From: Jim Odiorne
Sent: Friday, October 10, 2003 4:36 PM
To: 'yori.milo@premera.com'
Cc: Mike Watson; John Hamje
Subject: Proposed negotiations

Yori,

Since you conveyed Premera's desire to negotiate certain issues that were pointed out in the draft consultant reports, a couple of issues have surfaced that impact our agreement to conduct those negotiations.

The first issue is the Commissioner's public representation, from the very beginning of this matter, that the process would be as public as possible. I am afraid that if we negotiate up until the time of the hearings, and at that time present some "agreement", we will have created a perception that the process was not public and that this was a back room process.

The second issue is my commitment to the Commissioner that I would do everything possible to provide an appeal-proof process. We obviously cannot guarantee that no appeal will be taken, but we can attempt to limit the grounds for appeal. Again, if we negotiate up until the hearings and present an "agreement" at the hearing, we have denied the public and the intervenors an opportunity to assess and test the final form of the transaction, and, under the very aggressive schedule we are operating under, we will, in all likelihood, have denied all parties the opportunity to identify witnesses and properly prepare for the hearings. We would have created a de facto amendment of the Form A, without giving anyone notice. I also think that if the hearing is considering the filed Form A, and the consultant reports, and all the discovery are based on the filed Form A, we will have created a record that will not clearly support the final decision that includes an "agreement" and de facto amended Form A.

I believe that the only way to really address the concerns I identified above, is to set a very aggressive schedule for the negotiations. The schedule I propose is that before noon on Wednesday, October 15, Premera will identify issues raised by the consultants' reports in three groups: issues Premera will agree to without further negotiation; issues that Premera will not agree to under any circumstances; and those issues that Premera believes may be resolved through negotiation. These three lists will be made available to the consultants to put them on notice of possible areas of change in the final reports. By close of business on Friday, October 17, I will identify from the list of possible negotiable issues, those which I believe have some possibility being resolved through negotiation and schedule necessary consultant input for October 20-22. On October 23, we will notify the consultants and the Intervenors of the results of the negotiations. The consultants will incorporate any negotiated agreement into their final reports that will be filed on October 27.

I see no other way to address my concerns and negotiate issues as Premera requested, without Premera's written agreement to modify the current schedule.

I will appreciate your comments on my concerns and proposal. JTO. 10/10/03

EXHIBIT 

10/20/2003